IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11655 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANNABHAI HAIDERBHAI VOHRA & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR CB DASTOOR for Petitioner No(s).: 1 - 1,2,3,4.

MR MR MENGDEY, AGP for Respondent No(s).: 1,2.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 18/07/2005

ORAL JUDGMENT

Rule. Mr.Mengdey, learned AGP waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties the petition is taken up for final disposal today.

2. In the present petition, the petitioners have challenged the order passed by the Gujarat Revenue Tribunal on 3rd September 2004 while deciding Appeal No.TEN.A.A.16/A/98 filed by the petitioners.

3. The petitioners had filed an application before the Deputy Collector under section 37(2) of the Bombay Land Revenue Code which application came to be rejected by the Deputy Collector by the order dated 1st May 1997. The petitioners' appeal against the order of the Deputy Collector came to be turned down by the Collector, Sabarkantha by his order dated 31st December 1997. The petitioners carried the said orders of the revenue authorities before the Gujarat Revenue Tribunal. The Revenue Tribunal by its impugned order dated 3rd September 2004 was also pleased to reject the appeal of the petitioners. Though the orders passed by the Deputy Collector and the Collector were on merits, the Tribunal rejected the appeal of the petitioners on the ground that the petitioners had earlier filed a civil suit with respect to the same subject matter before the civil Judge (SD), Palanpur which suit was dismissed and that therefore the petitioners could not have filed proceedings under section 37(2) of the Bombay Land Revenue Code and that the

Deputy Collector and the Collector did not have jurisdiction to entertain the application.

4. At the outset, it can be noted that the civil proceedings initiated by the petitioners were not decided on merits, but the application for permitting the petitioners to prosecute the suit in forma pauperis was treated to have abated for want of bringing the legal heirs of the deceased on record. Despite noting this aspect of the matter, the Tribunal was of the opinion that the only remedy available with the petitioners would be to seek setting aside of the abatement of the proceedings and having moved the civil court, proceedings under section 37(2) of the Bombay Land Revenue Code would not be maintainable. Learned advocate for the petitioners drew my attention to the provisions of section 11 and section 4 of the Bombay Revenue Jurisdiction Act 1876 and contended that in fact it was civil proceedings which were barred and the appropriate remedy was to first initiate proceedings under section 37(2) of the Bombay Land Revenue Code. He drew my attention to sub-section (3) of section 37 of the Code and submitted that civil suit could have been filed only after exhausting all remedies under the Bombay Land Revenue Code and within a period of one year of passing of the final order. He placed reliance on the

decision of this Court in the case of Thakor Jamasherkhanji v. Rajgor G.V. 1998 (3) GLR 1966 in support of his contention in this regard.

5. From the above discussion, it can be seen that the short ground on which the Revenue Tribunal dismissed the appeal of the petitioners is that the petitioners had earlier instituted a civil suit before the Civil Judge (SD), Palanpur which suit came to be dismissed for want of prosecution. Learned advocate for the petitioners is justified in contending that in fact the petitioners ought to have first initiated proceedings under section 37(2) of the Bombay Land Revenue Code and the civil suit was filed by the petitioners under wrong legal advise. Considering the provisions of the Bombay Land Revenue Code and in particular, section 37 of the Code, it is clear that the revenue authorities were competent to decide the application filed by the petitioners under section 37(2) of the Bombay Land Revenue Code and the Gujarat Revenue Tribunal was not justified in dismissing the appeal of the petitioners on the ground of non-maintainability of such proceedings.

6. Considering the above aspect of the matter and in particular the fact that the civil suit was dismissed for

want of prosecution and not on merits, the proceedings are remanded to the Gujarat Revenue Tribunal after quashing and setting aside the impugned order dated 3rd September 2004 for consideration of the appeal on merits.

7. With the above directions, the petition is allowed to the above extent. Rule is made absolute to the above extent with no order as to costs.

Direct service.

(Akil Kureshi, J.)

(vjn)